

## RESOLUTION NO. SA-13-32

**A RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY (I) APPROVING A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY AND SADBERRY-PALM AVENUE LLC FOR THE SALE OF LAND, AND CONFIRMING THE USE OF TAX ALLOCATION BOND PROCEEDS, FOR THE DEVELOPMENT OF THE 9<sup>TH</sup> & PALM AVENUE RETAIL/COMMERCIAL SPACE DEVELOPMENT PROJECT LOCATED AT 735-849 PALM AVENUE (APN 626-250-03, 04, 05 & 06) AND MAKING CERTAIN FINDINGS RELATING THERETO, AND (II) APPROVING OTHER RELATED ACTIONS**

**WHEREAS**, the Imperial Beach Redevelopment Agency (the "Redevelopment Agency") was a redevelopment agency in the City of Imperial Beach (the "City"), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (the "Redevelopment Law"); and

**WHEREAS**, Assembly Bill No. X1 26 (2011-2012 1<sup>st</sup> Ex. Sess.) ("AB 26") was signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and to the California Health and Safety Code ("H&S Code"), including adding Part 1.8 (commencing with Section 34161) ("Part 1.8") and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the H&S Code; and

**WHEREAS**, pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the business and fiscal affairs of the former redevelopment agencies; and

**WHEREAS**, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 (the "Successor Agency"); and

**WHEREAS**, on February 15, 2012, the Board of Directors of the Successor Agency, adopted Resolution No. SA-12-01 naming itself the "Imperial Beach Redevelopment Agency Successor Agency," the sole name by which it will exercise its powers and fulfill its duties pursuant to Part 1.85 of AB 26, and establishing itself as a separate legal entity with rules and regulations that will apply to the governance and operations of the Successor Agency; and

**WHEREAS**, as part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012). On September 29, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1585 ("AB 1585"), which further amended certain provisions of AB 26 as amended by AB 1484 (AB 26, AB 1484, and AB 1585 are collectively referred to herein as the "Dissolution Act"); and

**WHEREAS**, on February 6, 1996, the City Council of the City adopted Ordinance No. 96-901 approving and adopting a Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project. On July 18, 2001, the City Council of the City adopted Resolution No.

2001-5477 and the Redevelopment Agency adopted Resolution No. R-01-36 approving Amendment 1 to the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project (the "Project Area"), which actions expanded the original redevelopment project area boundaries adopted and established on February 7, 1996 to effectively include the entire developable area of the City (the original Redevelopment Plan and the Amendment No. 1 to the Redevelopment Plan are referred to collectively as the "Redevelopment Plan"); and

**WHEREAS**, the Redevelopment Agency adopted its Five-Year Implementation Plan for the Project Area, as amended from time to time (the "Implementation Plan"), which established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization; and

**WHEREAS**, the City and Sudberry-Palm Avenue LLC, a California limited liability company (the "Purchaser") entered into that certain Disposition and Development Agreement dated December 14, 2011, which was amended by that certain "Letter Agreement" entered into by the City and the Purchaser and dated March 15, 2012, as further amended by that certain "Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work" entered into by the City and the Purchaser and dated August 10, 2012, as further amended by that certain second "Letter Agreement" entered into by the City and the Purchaser and dated December 20, 2012, and as further amended by that certain third "Letter Agreement" entered into by the City and the Purchaser and dated September 23, 2013, all collectively referred to as the "DDA"; and

**WHEREAS**, the City's right, title, and interest in and to certain real property (the "Palm Ave. Properties") identified as 735-849 Palm Avenue (APN: 626-250-03, 04, 05, & 06), and generally located at the south side of Palm Avenue (State Route 75), between 7<sup>th</sup> Street and 9<sup>th</sup> Street within the Project Area, was subsequently transferred to the Successor Agency. The DDA pertains to the sale to and development by the Purchaser of the Palm Ave. Properties and additional land (certain City public rights-of-way) to be vacated by the City, comprising in total of approximately 4.75 acres (collectively defined in the DDA as the "Site"); and

**WHEREAS**, the DDA was assigned by the City to the Successor Agency pursuant to that certain Assignment and Assumption Agreement dated December 27, 2012 (the "Assignment Agreement"). Pursuant to the Assignment Agreement, the City was released and relieved of performance of all terms, covenants, and conditions on the part of the City to be performed, occurring, or arising under the DDA, including all Attachments attached thereto and agreements entered into by the City pursuant to the DDA from and after the Effective Date of the Assignment Agreement, except for the financial obligations under the DDA to provide up to \$2.2 Million to pay or reimburse the Purchaser for the cost of plans for, permitting, construction and installation of the Public Improvements from the tax allocation bond proceeds received by the City from the Redevelopment Agency, as such funds are defined in the DDA as the "Cooperation Agreement Revenues" and "Public Improvement Funds", as long as the City has possession of such funds. The Assignment Agreement did not relieve any other party from the obligations under the DDA, or relieve the City of any of its rights and interests relating to the City's obligations under the DDA including, without limitation, the right to terminate the DDA pursuant to Section 512(b) of the DDA; and

**WHEREAS**, the Purchaser and the Successor Agency have negotiated a proposed Purchase and Sale Agreement, as the same may be amended, supplemented or modified from time to time in accordance with the terms thereof (the "Purchase Agreement") that is a renegotiation of all of the terms and conditions of the DDA. If and when the Purchase

Agreement becomes effective, it will supersede and replace the DDA in its entirety, and the City, the Successor Agency, and the Purchaser would have no further rights or obligations under the DDA except as may be expressly provided therein; and

**WHEREAS**, the "Effective Date" of the Purchase Agreement shall mean the date upon which all of the following conditions have been satisfied: (i) the approval of the Purchase Agreement by the Successor Agency and its Oversight Board; (ii) the approval of the Amended Long Range Property Management Plan by the Successor Agency and its Oversight Board pursuant to the Dissolution Act; (iii) the approval of the Amended Long Range Property Management Plan by the State Department of Finance (the "DOF") pursuant to the Dissolution Act; (iv) the effectiveness of the Purchase Agreement pursuant to the Dissolution Act, or the review and approval of the Purchase Agreement by the DOF if the DOF timely and properly requests to review the Oversight Board's action approving the Purchase Agreement in accordance with the Dissolution Act; and (v) the execution of the Purchase Agreement by both the Successor Agency and Purchaser; and

**WHEREAS**, the Purchase Agreement concerns the sale of the Site and the Purchaser's associated development of the "Project", defined and described in detail in the Purchase Agreement and summarized as follows: (i) a "town center" of new construction combining retail with commercial space in a pedestrian-friendly environment, consisting of approximately 46,200 square feet of building area in seven (7) buildings (designated in the Purchase Agreement as Parcels "A" through "G"), surface parking consisting of approximately 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related improvements (collectively defined in the DDA as the "Private Improvements"), and (ii) certain off-Site public improvements, including without limitation intersection improvements at Delaware Avenue, Palm Avenue and State Route 75 and all associated improvements, curb, gutter, landscaping, traffic signal, alley and undergrounding improvements required for the Project, and any other Cal-Trans requirements (collectively defined in the DDA as the "Public Improvements"). The Purchase Agreement further contemplates the City's ownership of the Public Improvements to be constructed on and off the Site pursuant to the Purchase Agreement; and

**WHEREAS**, the Successor Agency desires to enter into the Purchase Agreement with the Purchaser for the purpose of and related to the development of the Project on the Site and the construction of the Public Improvements; and

**WHEREAS**, in connection with the anticipated effectiveness of the Purchase Agreement, the City has prepared a proposed commitment letter (the "Commitment Letter") that would commit the City to certain actions in order to facilitate the Successor Agency's implementation of the Purchase Agreement; and

**WHEREAS**, pursuant to California Government Code Section 65402, the acquisition and disposition of the Site for the purposes and uses proposed by the Purchaser as outlined and provided for in the Purchase Agreement conform in every respect with the adopted General Plan and Local Coastal Program of the City as reported to and confirmed by the City Council of the City by adoption of Resolution No. 2011-7131, approved and adopted on December 14, 2011; and

**WHEREAS**, a public hearing has been duly called, noticed and advertised as required by law for October 2, 2013, at 6:00 p.m. in the City Council Chambers of the City, which is located at 825 Imperial Beach Boulevard, Imperial Beach, CA 91932, for the City Council and

the Successor Agency to consider approval of the Purchase Agreement, as contemplated by the Redevelopment Law; and

**WHEREAS**, pursuant to H&S Code Section 33433 of the Redevelopment Law, the Successor Agency has caused the preparation of a summary ("Summary Report") which contains the following:

- (A) A summary of the proposed Purchase Agreement.
- (B) A summary which describes and specifies all of the following:
  - (i) The cost of the Purchase Agreement to the Successor Agency, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the agency, plus the expected interest on any loans or bonds to finance the Purchase Agreement;
  - (ii) The estimated value of the interest to be conveyed, determined at the highest and best uses permitted under the Redevelopment Plan;
  - (iii) The estimated value of the interest to be conveyed, determined at the use and with the conditions, covenants, and development costs required by the Purchase Agreement. Since the compensation from the sale of the Site is less than the fair market value of the interest to be conveyed, determined at the highest and best use consistent with the Redevelopment Plan, the Successor Agency has caused to be provided as part of the Summary Report an explanation of the reasons for the difference; and
  - (iv) An explanation of why the sale of the Site will assist in the elimination of blight, with reference to all supporting facts and materials relied upon in making this explanation.

**WHEREAS**, the Purchase Agreement contains all the provisions, terms, conditions and obligations required by state and local law, and a copy of the Purchase Agreement and the Summary Report have been available for public review and copying at the Secretary's office as required by the Redevelopment Law; and

**WHEREAS**, the sale of the Site and the construction of the Public Improvements will assist in the elimination of blight as more fully discussed in Section VII of the Summary Report, and the development of the Site in accordance with the Purchase Agreement is consistent with the goals and objectives of the Implementation Plan; and

**WHEREAS**, at the conclusion of the October 2, 2013 noticed public hearing, by the adoption of Resolution No. 2013-7402, the City made the findings required by H&S Code Section 33433 of the Redevelopment Law, approved the Purchase Agreement between the Successor Agency and the Purchaser, confirmed the use of tax allocation bond proceeds for the development of the Project, approved the Commitment Letter, and approved other related actions; and

**WHEREAS**, in accordance with the appraised value of the Site as set forth in the appraisal dated September 10, 2013, and pursuant to Section 201 of the Purchase Agreement,

the "Purchase Price" (the monetary consideration payable to the Successor Agency by the Purchaser) for the Site includes the following two components: (a) the payment of the sum of \$213,000, in cash, at the Close of Escrow; and (b) the payment of the "Participation Component" in accordance with the proposed Payment Agreement attached to the Purchase Agreement, equal to 1.5% of the gross sales price from the first arm's-length sale of each parcel or parcels of the Site (or any portion thereof) by the Purchaser in any number of transactions which is completed within the first 55-years from the Effective Date of the Purchase Agreement, if any; and

**WHEREAS**, the sale proceeds of \$213,000 cash to be received by the Successor Agency from the sale of the Site to the Purchaser pursuant to the Purchase Agreement will be remitted after the close of escrow to the San Diego County Auditor-Controller's Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act. In addition, any funds received by the Successor Agency pursuant to the Participation Component of the Purchase Price (described above), pursuant to a qualifying sale in accordance with the proposed Payment Agreement, would likewise be remitted to the San Diego County Auditor-Controller's Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act; and

**WHEREAS**, a Mitigated Negative Declaration ("MND") was prepared for the Project, routed for public review and submitted to the State Clearinghouse (SCH #2011111018) for agency review pursuant to the provisions of the California Environmental Quality Act ("CEQA"). The City Council of the City approved and certified the information contained in the Final MND for the Project on December 14, 2011, which included mitigation measures that will avoid or reduce all potentially significant environmental effects to below a level of significance. This activity has been determined to be adequately addressed in the Final MND for the Project, and there is no substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines Section 15162; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE, BE IT RESOLVED** by the Imperial Beach Redevelopment Agency Successor Agency, as follows:

- Section 1.** The Successor Agency hereby determines that the foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Successor Agency hereby recognizes that it has received and heard all oral and written objections to the proposed Purchase Agreement, to the proposed sale of the Site pursuant to the proposed Purchase Agreement, and to other matters pertaining to this transaction and that all such oral and written objections are hereby overruled.
- Section 3.** The Successor Agency has reviewed and approves the Summary Report prepared pursuant to H&S Code Section 33433 of the Redevelopment Law.

**Section 4.** The Successor Agency hereby finds and determines each of the following:

(a) That the sale of the Site will assist in the elimination of blight and is consistent with the Implementation Plan adopted pursuant to H&S Code Section 33490 of the Redevelopment Law;

(b) That the consideration to be received by the Successor Agency for the sale of the Site as described in the Purchase Agreement is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale of the Site;

(c) That all consideration to be paid under the Purchase Agreement is in amounts necessary to effectuate the purposes of the Redevelopment Plan;

(d) That the Public Improvements to be constructed as part of the development of the Project are within the Project Area and that the construction and installation of the Public Improvements, which shall be publicly owned, are of benefit to the Project Area by helping to eliminate blight within the Project Area;

(e) That no other reasonable means of financing the Public Improvements are available to the community; and

(f) That the payment of tax allocation bond proceeds for the Public Improvements is consistent with the Implementation Plan.

**Section 5.** The Successor Agency hereby approves the proposed Purchase Agreement between the Successor Agency and the Purchaser and all of the terms and provisions of the Purchase Agreement including, without limitation, the sale of the Site to the Purchaser for the Purchase Price for development of the Project, and the construction of the Public Improvements in accordance with the Purchase Agreement.

**Section 6.** The Successor Agency hereby authorizes and directs the Executive Director, or designee, of the Successor Agency to execute the Purchase Agreement and all documents, instruments, and agreements required by and for the implementation of the Purchase Agreement including, without limitation, all Attachments to the Purchase Agreement on behalf of the Successor Agency, subject to the approval as to form by the Executive Director of the Successor Agency and its legal counsel.

**Section 7.** The Successor Agency hereby authorizes and directs the Executive Director, or designee, of the Successor Agency (i) to make such amendments, changes or revisions to the Purchase Agreement or to any document, instrument, or agreement required by and for the implementation of the Purchase Agreement on behalf of the Successor Agency, as approved by the Executive Director of the Successor Agency and its legal counsel, (ii) to execute such other documents and take such

other actions as are necessary or desirable and appropriate to carry out and implement the purposes of the Purchase Agreement and to effectuate the intent of this Resolution on behalf of the Successor Agency including, without limitation, approving extensions of deadlines set forth in the Purchase Agreement and the Schedule of Performance (Attachment No. 5 to the Purchase Agreement) as determined necessary by the Executive Director, or designee, to effectuate the purposes of the Purchase Agreement, and (iii) to administer the Successor Agency's obligations, responsibilities and duties to be performed under the Purchase Agreement and all documents, instruments, and agreements required by and for the implementation of the Purchase Agreement on behalf of the Successor Agency.

- Section 8.** The Successor Agency hereby authorizes and directs the Executive Director, or designee, of the Successor Agency to remit to the San Diego County Auditor-Controller's Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act the proceeds of the Purchase Price that are received by the Successor Agency from the Successor Agency's sale of the Site to the Purchaser pursuant to the Purchase Agreement including (i) the cash in the amount of \$213,000 to be received by the Successor Agency at the Close of Escrow and (ii) any funds received by the Successor Agency pursuant to the Participation Component of the Purchase Price, pursuant to a qualifying sale in accordance with the proposed Payment Agreement.
- Section 9.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Successor Agency declares that its Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.
- Section 10.** The adoption of this Resolution is not intended to and shall not constitute a waiver by the Successor Agency of any constitutional, legal or equitable rights that the Successor Agency may have to challenge, through any administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of the Dissolution Act, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of the Dissolution Act, and any and all related legal and factual issues, and the Successor Agency expressly reserves any and all rights, privileges, and defenses available under law and equity.
- Section 11.** The Successor Agency hereby determines that a Mitigated Negative Declaration (MND) was prepared for the Project, routed for public review and submitted to the State Clearinghouse (SCH #2011111018) for agency review pursuant to the provisions of the California Environmental Quality Act ("CEQA"). The City Council of the City approved and certified the information contained in the Final MND for the Project on December

14, 2011, which included mitigation measures that will avoid or reduce all potentially significant environmental effects to below a level of significance. This activity has been determined to be adequately addressed in the Final MND for the Project, and there is no substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines Section 15162.

**Section 12.** This Resolution shall take effect upon the date of its adoption.

**PASSED, APPROVED, AND ADOPTED** by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 2<sup>nd</sup> day of October 2013, by the following vote:

<b>AYES:</b>	<b>BOARD MEMBERS:</b>	<b>SPRIGGS, PATTON, BRAGG, JANNEY</b>
<b>NOES:</b>	<b>BOARD MEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>BOARD MEMBERS:</b>	<b>BILBRAY</b>

  
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**JAMES C. JANNEY**  
**CHAIRPERSON**

**ATTEST:**

  
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**JACQUELINE M. HALD, MMC**  
**SECRETARY**